**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF FLORIDA**
**PENSACOLA DIVISION**

In re:

SHANE L. CANNON, Case No. 12-10462-KKS
Chapter: 7

Debtor.
_____/

BEACH COMMUNITY BANK, Adv. No. 15-03014-KKS
Plaintiff,
v.

SHANE L. CANNON,
Defendant.
_____/

JOHN E. VENN, JR., TRUSTEE, Adv. No. 16-03015-KKS
Plaintiff,
v.

SHANE L. CANNON, et al.,
Defendants.
_____/

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM OPINION ON ALTER EGO ISSUE

THESE ADVERSARY PROCEEDINGS were consolidated for trial on the narrow issue of whether SLC Investments, Inc. ("SLC"), is the alter ego of Defendant, Shane L. Cannon.[1] The trial took place over two

[1] Count I of each Plaintiff's complaint seeks a determination by the Court that SLC is the alter ego of Defendant Cannon. (Adv. No. 15-03014, Doc. 85; Adv. No. 16-03015, Doc. 26).

days on February 21 and March 28, 2017.[2] Plaintiffs, Defendant Cannon, and Defendant Robert Giglio ("Mr. Giglio")[3] presented evidence, made legal arguments, and submitted proposed findings of fact and conclusions of law.[4] For the reasons set forth below, and after careful consideration of all evidence and legal arguments, the Court determines that Plaintiffs failed to meet their burden of proving that SLC Investments, Inc. ("SLC") was the alter ego of Defendant Cannon.

## FINDINGS OF FACT

SLC was formed on January 14, 1993.[5] From 1993 to sometime in 1997 SLC developed real estate construction projects for which it held title to the property; after 1997 SLC engaged in a similar business but did not own title to the property on which the projects were being built or developed.[6] From its inception, SLC's stock was owned by Defendant Cannon and his wife,[7] each of whom owned 50% of the shares.[8] SLC had

[2] The transcripts of the trial are docketed in both Adversary Proceedings. In Adv. No. 15-03014, the transcript of day one of the trial is at Doc. 119 and the transcript of day two of the trial is at Doc. 114. In Adv. No. 16-03015, the transcript of day one of the trial is at Doc. 129 and the transcript of day two of the trial is at Doc. 122. All references to the trial transcripts in this Opinion refer to the transcripts in both Adversary Proceedings.
[3] Robert Giglio is a defendant in Adv. No. 16-03015.
[4] Adv. No. 15-03014, Docs. 125 & 128; Adv. No. 16-03015, Docs. 116, 117 & 118.
[5] Defendant Cannon's Ex. 1.
[6] Adv. No. 15-03014, Doc. 128, p. 2.
[7] Defendant Cannon's wife, Robin Cannon, is also a defendant in Adv. No. 16-03015.
[8] Adv. No. 15-03014, Doc. 128, p. 2.

its own checking account, credit card, and accounts with various suppliers, even though some of those accounts were maintained by the suppliers in Defendant Cannon's individual name.

SLC provided management services for Defendant Cannon's father's trust, the Ronald M. Cannon Trust (the "Trust").[9] Defendant Cannon is the Trustee, but not a beneficiary, of the Trust; the beneficiaries are Defendant Cannon's daughter and other of his father's grandchildren.[10] SLC also provided property management services for BCW Construction, Inc. ("BCW"), a related entity of which Cannon was a one-third owner.[11] BCW paid SLC $5,000 per month for these management services.[12] SLC also provided project management services for projects in which it, or Defendant Cannon, had interests, and for a project entitled "Osprey Landing."[13] Neither Defendant Cannon nor SLC had any ownership interest in Osprey Landing;[14] the partners in Osprey Landing were Mr. Giglio and Defendant Cannon's uncle.[15]

---

[9] Day Two of Trial Tr. 42:17-22.
[10] *Id.* at 42:12-14.
[11] *Id.* at 37:18-25, 38:9-14.
[12] *Id.* at 39:15-16.
[13] *Id.* at 37:18-38:8.
[14] Adv. No. 15-03014, Doc. 128, p. 2.
[15] For a certain period of time, SLC also managed a recreational vehicle in which Defendant Cannon had an interest. Ultimately, this RV was foreclosed on by Bank of America.

SLC, Defendant Cannon and his wife, and the other entities in which Defendant Cannon had interests all filed their own income tax returns.[16] James Wilder, owner of Emerald Coast Tax Service and a formerly enrolled agent with the IRS, began preparing tax returns for SLC in 1995 or 1996 and continued in that capacity through the date of the trial.[17] Wilder also prepared tax returns for Defendant Cannon and his wife as well as another entity, Destin Ventures, LLC.[18] With respect to SLC, Defendant Cannon provided Wilder with ledgers and spreadsheets categorized as to project and purpose, and categorized as to personal income.[19] These ledgers and spreadsheets included information from checks written by and deposits made into SLC.[20] If Wilder had questions regarding a transaction he would ask Defendant Cannon to clarify.[21] Defendant Cannon and SLC had utilized this bookkeeping method consistently throughout many years, and Wilder testified at trial that he had no issues with or questions about the method, and that this method of

[16] Day Two of Trial Tr. 110:10-111:4.
[17] *Id.* at 110:10-21.
[18] *Id.* at 110:22-111:4.
[19] *Id.* at 112:7-23.
[20] *Ibid.*
[21] *Id.* at 113:7-17.

bookkeeping was fairly customary in his experience in the construction industry; especially in closely held corporations.[22]

The evidence is clear that Defendant Cannon used SLC's bank account for business and personal matters. Among other things, Defendant Cannon paid health insurance premiums for his wife and child, as well as payments on the first and second mortgages on his personal residence, out of the SLC account. Defendant Cannon testified that he had consulted with Wilder regarding the health insurance payments and that Wilder advised him that payment of the health insurance premiums were appropriate expenditures for a Subchapter S corporation, such as SLC.[23] Defendant Cannon further testified that the mortgage payments were repayment of capital contributions made by Cannon and his wife and that these payments were disclosed to Wilder.[24] In addition, Wilder was familiar with capital contributions made by Mr. Giglio and others for Osprey Landing through the SLC account, and testified that he was certain that "not even one dime" of these contributions went for anything other than the benefit of Osprey Landing.[25]

---

[22] *Id.* at 114:12-115-25, 116:11-117:1.
[23] *Id.* at 95:18-96:15.
[24] *Id.* at 93:11-94:5.
[25] *Id.* at 125:24-128:5.

SLC kept ledgers, updated at least monthly, of income and expenses for all projects it was managing and for which it received money and made expense payments out of its operating account.[26] In addition to depositing personal funds into the SLC operating account on numerous occasions, Defendant Cannon also deposited funds from the Trust, and rental payments for other properties into the SLC account. [27]

According to Defendant Cannon, when the economy went bad in 2008, SLC's business "shut down."[28] Various projects for which Defendant Cannon had personally guaranteed loans went into default. In 2009, Defendant Cannon and his wife took out a second mortgage on their home and used that money to help fund SLC.[29]

In August of 2010, Beach Community Bank ("BCB") filed its first suit against Defendant Cannon and others on account of one of the real estate development projects; SLC was not a defendant in this 2010 suit.[30] In September of 2010, Defendant Cannon and his wife received an income

[26] *Id.* at 26:15-27:7.
[27] Defendant Cannon deposited checks from his mother for anniversary and birthday gifts, money from his father's trust to be used for the trust beneficiaries, money from the trust that he and his wife borrowed from the trust to put into SLC, and money paid to him by third parties for real estate commissions. He and his wife also deposited several joint income tax refund checks into the SLC account.
[28] Day Two of Trial Tr. p. 31:12-24.
[29] *Id.* at 32:15-33:2.
[30] *Id.* at 142:23-143:1.

tax refund in the approximate amount of $135,000 that Defendant Cannon deposited into SLC's operating account.[31] The refund check was payable to them jointly.[32] In October of 2010, Defendant Cannon deposited a check payable to him personally from Destin Ventures into the SLC operating account.[33] The Destin Ventures check was in the amount of $4,500 and represented a payment for rental of a unit owned by Destin Ventures, and managed by SLC.

In May of 2011, BCB obtained a final judgment against Defendant Cannon and others in the 2010 suit (the "2011 judgment").[34] BCB initiated another suit against Defendant Cannon and others in 2011; this time, SLC was also a defendant. BCB obtained a foreclosure judgment against SLC and a judgment against the guarantors in that suit, including Defendant Cannon, in 2012 (the "2012 judgment").[35] In May of 2013, BCB conducted a foreclosure sale of the properties securing the 2011 judgment.[36] This sale produced a credit of $2,025,000.00 toward the principal balance due on the 2011 judgment of approximately $2.2 million.[37]

---

[31] Plaintiffs' Ex. 5.
[32] *Ibid.*
[33] Plaintiffs' Ex. 6.
[34] Adv. No. 16-03015, Doc. 82 at ¶ 8.
[35] Defendant Cannon's Ex. 25.
[36] Day Two of Trial Tr. p. 46:3-8.
[37] Defendant Cannon's Ex. 41.

In 2014, Defendant Cannon and others began negotiations with BCB on a variety of other loans; those negotiations resulted in forbearance agreements between Defendant Cannon and others and BCB in March of 2015.[38]

Although BCB and Defendant Cannon had reached forbearance agreements on other loans in March of 2015, BCB made its first effort to collect against Defendant Cannon on either the 2011 or the 2012 judgment; it served a Writ of Garnishment on SLC's bank on February 27, 2015.[39] That garnishment resulted in SLC's account being frozen. After the garnishment, Defendant Cannon allowed SLC to be administratively dissolved with the Florida Department of State, and commenced using other bank accounts with which to continue doing business that SLC had been doing prior to the garnishment.

BCB had the legal right and ability to pursue SLC's assets, as well as Defendant Cannon's assets, beginning in 2012. To date, there is no record of BCB making any effort to pursue SLC's assets, other than foreclosing on the property as described above, until it served its Writ of Garnishment in 2015.

[38] Defendant Cannon's Ex. 33.
[39] Adv. No. 16-03015, Doc. 82 at ¶ 14.

## CONCLUSIONS OF LAW

"To pierce the corporate veil under Florida law, Plaintiffs have the heavy burden to prove by a preponderance of the evidence that: 1) the shareholder dominated and controlled the corporation to such an extent that the corporation's independent existence was in fact non-existent and the shareholder was in fact the alter ego of the corporation; 2) the corporate form must have been used fraudulently or for an improper purpose; and 3) the fraudulent or improper use of the corporate form caused injury to the claimant."[40]

The parties agree that Defendant Cannon had dominion and control over SLC. It is undisputed that Defendant Cannon deposited income of other entities into SLC's account and paid expenses of such entities and numerous projects from the SLC account. It is equally without question that Defendant Cannon deposited other checks payable to him, individually, into SLC's operating account. The issue here is whether Defendant Cannon used SLC fraudulently or for an improper purpose, such that the Court should pierce the corporate veil of SLC.[41]

---

[40] *Spence v. Hintze (In re Hintze)*, Adv. No. 13-01007 (Bankr. N.D. Fla. Feb. 9, 2017).
[41] *See In re Hillsborough Holdings Corp.,* 176 B.R. 223, 245 (M.D. Fla. 1994).

Plaintiffs had the burden to prove by the preponderance of the evidence that, in the Florida Supreme Court's words, "the corporation, was actually organized or used to mislead creditors or to perpetrate a fraud upon them."[42] The Florida Supreme Court has articulated, in numerous cases, its criteria for piercing the corporate veil. The seminal case on this issue is *Dania Jai Alai Palace Inc. v. Sykes*, in which the court stated:

> The overwhelming weight of authority is to the effect that courts will look through the screen of corporate entity to the individuals who compose it in cases in which the corporation was a mere device or sham to accomplish some ulterior purpose, *or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock,* or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose.[43]
> ...
> *Biscayne Realty & Insurance Co.,* on which we relied in *Mayer,* requires improper action on the part of the corporation or its members before the corporate veil may be pierced.
>
> [In] *Riesen v. Maryland Casualty Co.,* we directly faced the question of whether the corporate veil could be pierced without a showing of improper conduct, and reiterated that in *Biscayne Realty & Insurance Co.:*
>
> > [T]his Court held that so long as proper use is made of the fiction that a corporation is an entity apart from its stockholders, the fiction will not be ignored, yet where stockholders enter into a transaction in their individual interest and utilize the

[42] *Dania Jai-Alai Palace, Inc. v. Sykes,* 450 So. 2d 1114, 1120 (Fla. 1984).
[43] *Id.* at 1117 (quoting *Mayer v. Eastwood-Smith & Co.,* 122 Fla. 34, 164 So. 684 (1935)).

> corporate name merely to mislead creditors or perpetrate a fraud, the legal entity will be ignored and the stockholders held individually liable.[44]

Whether or not a corporate veil should be pierced, or whether a court should hold that a corporation is the alter ego of one or more individuals, is a fact specific determination. The Florida Supreme Court in *Dania Jai Alai* reversed a directed verdict for the plaintiff so that the case could go to a jury on the alter ego issue. The court's reversal of the directed verdict was based on the fact that there was some evidence which, if accepted by the jury, "tended to show" that the two corporate defendants "operated independently of each other."[45] Those facts, said the court, included that one corporation had offices and a written concession agreement with the other, that one corporation exercised control of valet parking services and food, beverage and program sales, and paid the other corporation for use of the premises and for concessions; both corporations had separate bank accounts and profit and loss statements; each corporation dealt with independent suppliers; one corporation had about

[44] *Id.* at 1118 (quoting *Riesen v. Maryland Casualty Co.,* 153 Fla. 205; 14 So.2d 197 (1943).
[45] *Id.* at 1121.

120 employees which independently hired, fired and controlled.[46] In reversing the directed verdict for the plaintiff, the Florida Supreme Court expressed no opinion on what the preponderance of the evidence showed, but rather felt that a directed verdict in light of such evidence was improper and that the matter should go to the jury, as fact finder.

Here, this Court is the fact finder in lieu of a jury. It therefore falls to this Court to decide, based on all the evidence, whether or not SLC is the alter ego of Defendant Cannon. Plaintiffs argue that Defendant Cannon used SLC to protect, hide or shield some personal funds from BCB: most notably the income tax refund received by him and his wife in 2010. Defendant Cannon does not dispute, nor can he based on the evidence, that he deposited this income tax refund into SLC's account. He and his wife testified that they did so in order to support SLC after the economy crashed in 2008. They also point out that the tax refund was a joint asset and argue that, as such, it would not have been subject to seizure or garnishment by SLC even had they deposited it into their joint checking account.[47]

---

[46] *Ibid.*

[47] Defendant Cannon's argument on this point is not entirely accurate. Defendant Cannon cites to Fla. Stat. § 655.79, which creates a rebuttable presumption that a bank account held by a husband and wife is an entireties account. Because this is a rebuttable presumption,

The remainder of the evidence, including the credible testimony of Defendant Cannon and his wife, shows that SLC was primarily used for a legitimate, separate purpose of developing and managing various real estate projects. SLC adhered to certain corporate formalities (such as maintaining its corporate existence with the Florida Secretary of State), had separate bank accounts, separate credit cards, filed separate income tax returns, and maintained books and records for each job that it managed, designed or maintained. Although undoubtedly Defendant Cannon used the SLC account with which to manage some of the Trust's funds, pay some personal expenses, and manage assets owned by other entities, there is no evidence that any of this was done for an improper purpose. The deposit of the large income tax refund into SLC's account rather than his, at a time that BCB did not have a judgment against SLC, is the single most suspicious transaction. But, the explanation of this deposit as a capital contribution at a time when SLC's business had been failing overcame the questionable timing of this transaction.

---

had Defendant Cannon and his wife deposited the refund check into their joint account, and had BCB attempted to garnish that account while the refund money remained in the account, the Cannons could have used entireties ownership as an affirmative defense against any such garnishment but BCB would have had an opportunity to prove that no entireties ownership applied. By depositing the refund into the SLC account, Defendant Cannon, intentionally or not, prevented SLC from having an opportunity to rebut the presumption of entireties ownership of the account and its contents.

BCB obtained its judgment against Defendant Cannon and others in 2011, but took absolutely no action against Defendant Cannon until 2015 to try to collect on that judgment. BCB presented no evidence whatsoever that it attempted to take Defendant Cannon's deposition in aid of execution, locate any money or property owned by Defendant Cannon or attempt to garnish any of Defendant Cannon's income, receivables or bank accounts.

The evidence further reflects that between 2011 and 2015, when BCB garnished SLC's bank account, Defendant Cannon and others were obligated to BCB on other loans and were successful in negotiating and executing loan workout and settlement agreements as to those loans. Defendant Cannon's testimony, along with that of BCB's former vice president Kathleen Pritchard and BCB's current vice president, Sasha Eastburn, indicates that throughout this period of time Defendant Cannon maintained a cordial working relationship with BCB.[48] Correspondence between Defendant Cannon and Ms. Eastburn supported this testimony.[49] This evidence supports Defendant Cannon's testimony that, in essence, he did not believe that BCB would take any affirmative action

[48] Day One of Trial Tr. 110:3-121:6; Day Two of Trial Tr. 135:16-142:18.
[49] *See* Plaintiffs' Ex. 150.

to try to collect on its judgment against him or SLC, at least without prior notice or an opportunity to negotiate or discuss the matter.

Since BCB garnished SLC's account in 2015, BCW has been paying Defendant Cannon the same $5,000 per month that it had been paying SLC prior to the garnishment. Plaintiffs urge that this is additional evidence that Defendant Cannon has improperly used SLC to hide money from his creditors, and that SLC was his alter ego. But, what else would one expect Defendant Cannon to do after the garnishment? After all, before the garnishment BCW paid SLC the $5,000 per month. Defendant Cannon was, in effect, SLC from the standpoint of running the BCW and other businesses. After BCW paid SLC, SLC then paid the $5,000 to Defendant Cannon. This is the way Defendant Cannon & SLC had done business since 1993. After the garnishment, Defendant Cannon could no longer use SLC – its checking account was frozen and his previously affable relationship with BCB had obviously come to an abrupt end. So, in order to make a living and keep the business going, Defendant Cannon filed bankruptcy and began collecting the money for his services directly rather than running it through SLC. It would have been foolish, and illogical, for Defendant Cannon to continue operating SLC.

Under Florida law, in order to pierce the corporate veil "it is not enough to show that the corporation's business affairs had been rather poorly handled."[50] Loose and haphazard business practices "certainly would not justify" the piercing of the corporate veil without an affirmative showing that Defendant Cannon had a fraudulent, illegal or improper purpose.[51] Even negligent or reckless behavior does not constitute improper conduct sufficient to pierce the corporate veil.[52]

In the two cases cited by Plaintiffs in which courts have pierced the corporate veil, the facts show clearly that the defendant(s) used the corporation for an improper purpose, and in those cases, the improper purpose was the primary reason why the corporation was being used. The first case, *Biscayne Realty & Ins. Co. v. Ostend Realty Co.*, was decided long before *Dania Jai-Alai,* and involved a corporation that had ceased to engage in any business, had disposed of all its property, and distributed all its assets to its stockholders, rendering the corporation essentially defunct. The individual who owned the vast majority of the corporation's

[50] *See Ally v. Naim,* 581 So. 2d 961, 963 (Fla. 3d DCA 1991).
[51] *Hilton Oil Transport v. Oil Transport Co., S.A.*, 659 So. 2d 1141, 1152 (Fla. 3d DCA 1995).
[52] *Robertson-Ceco Corp. v. Cornelius*, No. 3:03-CV-475, 2007 WL 1020326 at *7 (N.D. Fla. 2007) (citing *Resolution Trust Corp. v. Latham & Watkins*, 909 F. Supp. 923, 930-33 (S.D.N.Y. 1995).

stock then used the corporation solely as a conduit to transfer title of real property, in which the corporation had no interest, to himself and others.[53]

In the second case, *Eckhardt v. United States*, the Eleventh Circuit, applying Florida law, affirmed the lower court's finding that the owner of a corporation was liable for the corporation's tax liability because the owner was the alter ego of the corporation.[54] In *Eckhardt* the owner formed his alter-ego corporation nine months after the IRS filed notice of a federal tax lien against the owner's previous corporation.[55] Additionally, the owner in *Eckhardt* transferred over $100,000 out of the alter-ego corporation for his personal benefit, without any justification.[56] The Eleventh Circuit ruled that these facts were sufficient to find that the owner had used his alter-ego corporation to evade the payment of employment taxes.[57]

In contrast to *Eckhardt,* SLC was formed long before BCB had a judgment against Defendant Cannon. Additionally, at trial, Defendant

[53] *Biscayne Realty & Ins. Co. v. Ostend Realty Co.*, 148 So. 560 (Fla. 1933).
[54] *Eckhardt v. United States*, 463 Fed. Appx. 852 (11th Cir. 2012).
[55] *Id.* at 857.
[56] *Ibid.*
[57] *Id.* at 858.

Cannon was able to provide credible explanations for all of the transfers both into and out of SLC's account.

In this Court's most recent ruling on this issue, the facts on which the Court pierced the corporate veil and ruled that a corporation was the individual's alter ego, it was clear that the corporation was being used solely for an improper purpose.[58]

## CONCLUSION

The burden of proof was on Plaintiffs. Based on the totality of circumstances, I find that Plaintiffs have not met their burden of proving that SLC was Defendant Cannon's alter ego. Without question, hindsight might make it appear that Defendant Cannon used SLC to shield his and his wife's $135,000 income tax refund from BCB's judgment against him. On the other hand, the Cannons' deposit of this tax refund into SLC to keep it afloat is entirely consistent with their having borrowed on their home in 2009 for the same purpose.

Since 2012 BCB has had the legal ability to go after Defendant Cannon's assets as well as SLC's. That being the case, since 2012 had Defendant Cannon's intent been to shield assets from BCB, he surely would

[58] *Spence v. Hintze (In re Hintze)*, Adv. No. 13-01007 (Bankr. N.D. Fla. Feb. 9, 2017).

have done so through a different or new corporation, and not through SLC, which could have had its assets seized by BCB at any time. It is illogical that Defendant Cannon would have continued to put his own and others' money into SLC and put that money at risk if his goal was to hide or shield that money from BCB.

Having considered the trial evidence, the credibility of the witnesses, the proposed findings of fact and conclusions of law, and having heard argument of counsel, judgment shall be entered for Defendant Cannon as to the issue of alter ego. Separate orders will be entered in Adversary Proceeding 15-03014 and Adversary Proceeding 16-03015 in accordance with this Opinion.

DONE and ORDERED on June 16, 2017.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all interested parties